

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|------------------------|---|-------------------------|
| ANDREW JOSEPH SIMET, |) | |
| |) | |
| Plaintiff, |) | 8:06cv420 |
| |) | |
| vs. |) | ORDER on INITIAL REVIEW |
| |) | |
| UNIVERSITY OF NEBRASKA |) | |
| MEDICAL CENTER, |) | |
| |) | |
| Defendant. |) | |

This matter is before the court on filing no. 2, the Motion to Proceed in Forma Pauperis ("IFP") filed by the plaintiff, Andrew Joseph Simet. Because the plaintiff qualifies to proceed IFP, filing no. 2 is granted. The plaintiff expresses concern regarding the treatment his wife is receiving at the University of Nebraska Medical Center ("UNMC"), and he has experienced difficulty obtaining information about her condition. He also has apparently been denied access to his wife at times while she has been hospitalized. The plaintiff alleges a violation of his civil rights for which he seeks injunctive relief.

The plaintiff's complaint need not be dismissed on initial review, although the defendant will probably raise, and may well prevail on, defenses of sovereign immunity. However, as initial review of the complaint is now concluded, it is time for the plaintiff to obtain service of process on the defendant, as set forth below. Because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendant, after the plaintiff completes and returns the appropriate forms.

IT IS THEREFORE ORDERED:

1. Filing no. 2, the plaintiff's Motion for Leave to Proceed In Forma Pauperis, is granted.
2. To obtain service of process on the defendant, the plaintiff must complete and return forms which the Clerk of Court will provide. The Clerk of Court shall send ONE summons form and ONE Form-285 to the plaintiff together with a copy of this Order. The plaintiff shall, as soon as possible, complete the forms and send the completed forms back to the Clerk of Court. In the absence of the forms, service of process cannot occur.
3. The defendant is an agency or instrumentality of the State of Nebraska. Neb. Rev. Stat. § 25-510.02(1) states in pertinent part: "(1) The State of Nebraska, **any state**

agency ... and any employee of the state ... sued in an official capacity may be served by leaving the summons at the office of the Attorney General ... or by certified mail service addressed to the office of the Attorney General." The plaintiff is advised that the address of the Nebraska Attorney General's office is 2115 State Capitol, Lincoln, Nebraska 68509.

4. Upon receipt of the completed forms, the Clerk will sign the summons, to be forwarded with a copy of the complaint to the U.S. Marshal for service of process. The Marshal shall serve the summons and complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal. The court will copy the complaint, and the plaintiff does not need to do so.

5. Fed. R. Civ. P. 4 requires service of the complaint on a defendant within 120 days of filing the complaint. Failure to obtain service on the defendant within that deadline may result in dismissal of this matter. If service has not been obtained on the defendant by the deadline set forth above, the Clerk of Court shall notify the court.

6 After an appearance has been filed by a defendant, the plaintiff shall serve on the defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. Parties usually serve copies of documents on other parties by first class mail.

7. The plaintiff shall include with each document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to the defendants or to the attorney of any represented defendant. To send communications to the court without serving a copy on the other parties to the case violates the rules of court.

8. A defendant has twenty (20) days after receipt of the summons to answer or otherwise respond to a complaint.

9. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court.

10. The plaintiff shall keep the court informed of his current address at all times while this case is pending. Failure to do so may result in dismissal.

DATED this 31st day of July, 2006.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge

INSTRUCTIONS: SUMMONS FORMS AND FORMS 285
for plaintiffs proceeding pro se and in forma pauperis

1. A summons form provides notice to a defendant that the defendant has been sued and must answer or otherwise respond to the complaint.
2. A form USM-285 ("form 285") provides directions to the U.S. Marshal as to whom to serve with process and where to serve the defendant(s). The U.S. Marshal serves the defendant(s) without cost to you because you are proceeding in forma pauperis ("IFP").
3. Do not copy your complaint to attach to the summons; the court will do that for you.
4. You may serve only defendant(s) named in the case caption of the complaint. If you want to serve additional defendant(s), you must move for leave to amend the complaint to add the additional defendant(s) to the case caption.
5. Be sure to print your case number on all forms.
6. You must give an address for the party to be served. The U.S. Marshal will not know a defendant's address.
7. Where a summons form states: "You are hereby summoned and required to serve on plaintiff's attorney" print your name and address.
8. Where a form 285 states: "send notice of service copy to requestor at name and address" print your name and address.
9. Where a form 285 calls for "signature of attorney or other originator" provide your signature and date the form.
10. Leave the last part of the summons form blank. The court will fill in the number of days in which the defendant must answer, and the court will sign and date the form.